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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/716,682	11/20/2000	Petr Peterka	GIC-535	8417

7590 02/03/2005

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EXAMINER

BELIVEAU, SCOTT E

ART UNIT	PAPER NUMBER
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2614

DATE MAILED: 02/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/716,682

Applicant(s)

PETERKA, PETR

Examiner

Scott Beliveau

Art Unit

2614

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 24 January 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☒ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: see attached.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☒ Newly proposed or amended claim(s) 4, 7-9, 11-15 and 17 would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☐ The a) ☐ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: 5 and 8.

Claim(s) rejected: 1-4, 6, 7, 9, 11-15 and 17.

Claim(s) withdrawn from consideration: _____.

8. ☒ The drawing correction filed on 24 January 2005 is a) ☒ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____

ADVISORY ACTION

The amendment filed 24 January 2004 under 37 CFR 1.116 in reply to the final rejection has been considered but is not deemed to place the application in condition for allowance and will not be entered as does not simply the issues for appeal and/or raises new issues requiring further consideration.

In particular, the proposed amendment is not deemed to place the application in better form for appeal by materially simplifying the issues for appeal in that proposed amended claim 6 (which is newly dependent on claim 4) appears to raise issues under 35 USC 112 given that the proposed amendment to claim 4 defines the condition as a user related condition and claim 6 redefines that the condition indicates a time related condition. As used within the instant application, the two terms do not appear to be overlapping (IA: Page 21, Line 21 – Page 22, Line 3) and were furthermore not previously considered by the examiner taken in combination.

With respect to the claim objections, the proposed amendments to the claims appear to overcome the prior objections pertaining to the phrase “said condition”.

The amendments to claims 4, 7-9, 11-15, and 17 incorporate subject matter from previously allowed subject matter and/or depend from limitations previously considered in their respective base claims. As these claims do not require more than a cursory review by the examiner, they would be allowable if submitted in a timely separately filed amendment canceling the non-allowable claims.

Conclusion

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Scott Beliveau whose telephone number is 703-305-4907.

The examiner can normally be reached on Monday-Friday from 8:30 a.m. - 6:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John W. Miller can be reached on 703-305-4795. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SEB
January 31, 2005


JOHN MILLER
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2600